



# Public Service Commission

## State of North Dakota

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COMMISSIONERS

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September 18, 2023

Mr. Steve Kahl  
Executive Secretary  
North Dakota Public Service Commission  
600 E Boulevard Ave Dept 408  
Bismarck ND 58505-0480

*via Hand Delivery*

Re: Case No. DM-23-263  
Public Service Commission  
Badlands Contracting, LLC  
Damage Prevention Enforcement

Dear Mr. Kahl:

Enclosed is a copy of the Consent Agreement to be filed in the above captioned case.

Best regards,

A handwritten signature in blue ink, appearing to read "BJ", with a long horizontal flourish extending to the right.

Brian Johnson  
Legal Counsel

Enclosure

**BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA**

**Public Service Commission  
Badlands Contracting, LLC  
Damage Prevention Enforcement**

**Case No. DM-23-263**

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<b>PUBLIC SERVICE COMMISSION,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>vs.</b>	)	<b>CONSENT AGREEMENT</b>
	)	
	)	
<b>Badlands Contracting, LLC</b>	)	
	)	
<b>Respondent.</b>	)	

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This Consent Agreement is entered into by and between Badlands Contracting, LLC (Badlands) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case No. DM-23-263.

**Preliminary Statement**

On July 7, 2023, the Commission received a North Dakota One-Call Complaint (Complaint) from ONEOK Rockies Midstream, LLC (ONEOK). The Complaint alleges Badlands violated North Dakota Century Code (N.D.C.C.) § 49-23-04(4) of the One-Call Excavation Notice System by beginning an excavation before receiving notice that all facilities had been located or cleared.

On July 25, 2023, Staff sent a letter to Badlands enclosing the July 7, 2023, Complaint and requested a response by August 18, 2023.

On August 17, 2023, Staff received a response from Badlands acknowledging that “field personnel commenced digging operations prior to the One Call locate being cleared.”

### **Discussion**

On July 3, 2023, Badlands provided one excavation notice to the North Dakota One-Call Notification Center (NDOC) with a work to begin date of July 7, 2023, to repair a waterline valve leak for Elkan Water located at the intersection of 6th Street SW and 113th Avenue SW, Killdeer, North Dakota. NDOC assigned ticket number 23067289 to the excavation.

On July 5, 2023, a ONEOK operator arrived at the site identified on the ticket to conduct the locate and observed Badlands already excavating. The ONEOK operator instructed Badlands to stop work and then completed the locate.

### **Alleged Violation – Excavation Started Prior to Underground Facility Locate**

N.D.C.C. § 49-23-04(4) states an excavator may begin excavation in a location when the excavator has received notice that all facilities have been located or cleared or at the expiration of the location period or extension of the location period.

In discussions with Badlands, Staff understands that a phone call was placed to ONEOK in an attempt to have the facility located sooner to begin repair on the Elkan Water riser valve which suffered a catastrophic failure. Badlands personnel were instructed not to commence excavation prior to the ONEOK operator locating the facility; however, these instructions were not adhered to and excavation commenced prior to the locate. Therefore, Badlands violated N.D.C.C. § 49-23-04(4) by beginning an excavation before receiving notice that all facilities had been located or cleared.

## **Agreement**

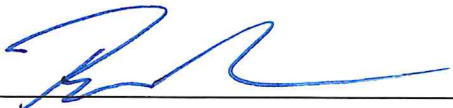
The Parties engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving this administrative action, the Parties agree to the following, subject to the approval and acceptance of the Commission:

1. Badlands violated N.D.C.C. § 49-23-04(4) by beginning an excavation before receiving notice that all facilities had been located or cleared.
2. Badlands agrees to be assessed a civil penalty of \$500.
3. Badlands agrees to remit \$250 of the \$500, payable to the North Dakota Public Service Commission within ten (10) business days of service of an Order accepting or approving the Consent Agreement. The remaining \$250 civil penalty is suspended on the condition that Badlands commits no further violation of N.D.C.C. Chapter 49-23 within five (5) years of the date of the Order.
4. In the event the Commission finds Badlands violated N.D.C.C. Chapter 49-23 within five (5) years of the date of the Order, Badlands shall remit the suspended portion of the penalty, within the time ordered by the Commission, in addition to any additional fines or penalties imposed for the subsequent violation.
5. If within five (5) years of the date of the Order there is no subsequent violation of N.D.C.C. Chapter 49-23 by Badlands, the remaining \$250 penalty is withdrawn.
6. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in this case.

7. Badlands consents to the filing of the Consent Agreement and an Order and hereby waives any further procedural requirements with respect to the issuance of the Order. Provided the Commission adopts this Consent Agreement and issues an Order consistent with it, Badlands understands and agrees to waive all rights to contest the violation, the right to be represented by counsel, the right to present evidence and arguments to the Commission, the right to cross-examine witnesses, or contest the validity of this Consent Agreement and Order, including all rights to administrative or judicial hearings or appeals.
8. For purposes of the identification requirement of Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), the performance is restitution, remediation, or an amount paid to come into compliance with the law, Badlands agrees to provide the Commission with a U.S. Department of the Treasury Internal Revenue Service Form W-9 for this purpose within ten (10) business days of service of an Order accepting or approving the Consent Agreement.
9. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
10. This agreement may be executed in counterparts and duplicate copies, each of which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.
11. The undersigned is authorized to act on behalf of Badlands and bind Badlands for the purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 18<sup>th</sup> day of September, 2023

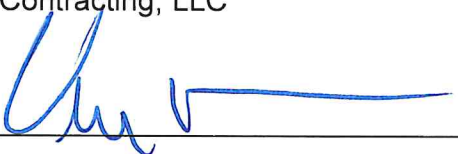
PUBLIC SERVICE COMMISSION  
ADVOCACY STAFF – DAMAGE PREVENTION

By:  \_\_\_\_\_

Brian Johnson  
Special Assistant Attorney General (Bar ID 07937)  
Public Service Commission  
600 E. Boulevard Ave., Dept. 408  
Bismarck, ND 58505-0480  
701-328-2407

Dated this 13<sup>th</sup> day of September, 2023

Badlands Contracting, LLC

By:  \_\_\_\_\_

Keith Norbeck, President